

**Executive Summary – Enforcement Matter – Case No. 42395**

**City of Palestine**

**RN102183233**

**Docket No. 2011-1531-MWD-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

**Media:**

MWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Approximately two miles east and 2.7 miles north of the intersection of United States Highway 84-79 and Farm-to-Market Road 645 at the confluence of Basset Creek and Town Creek, southwest of the City of Palestine, Anderson County

**Type of Operation:** Wastewater treatment plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** December 16, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$13,200

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$13,200

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 42395**

**City of Palestine**

**RN102183233**

**Docket No. 2011-1531-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** August 10, 2011

**Date(s) of NOE(s):** August 24, 2011

***Violation Information***

Failed to comply with permitted effluent limits for ammonia nitrogen [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010244001, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A.

**Technical Requirements:**

The order will require the Respondent to, within 90 days, submit written certification demonstrating compliance.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, R - 04, (817) 588-5890; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

**TCEQ SEP Coordinator:** N/A

**Respondent:** Bob Herrington, Mayor, City of Palestine, 504 North Queen Street, Palestine, Texas 75801

Michael Ohrt, City Manager, City of Palestine, 504 North Queen Street, Palestine, Texas 75801

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	29-Aug-2011	<b>Screening</b>	29-Aug-2011	<b>EPA Due</b>	5-Dec-2011
	<b>PCW</b>	12-Sep-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Palestine		
<b>Reg. Ent. Ref. No.</b>	RN102183233		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	42395	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-1531-MWD-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$5,000**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **164.0%** Enhancement **Subtotals 2, 3, & 7** **\$8,200**

Notes: Enhancement for one order with denial of liability, six NOVs with same/similar violations, two NOVs with dissimilar violations, and 22 months of self-reported effluent violations.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts \$314  
Approx. Cost of Compliance \$5,000  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$13,200**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$13,200**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$13,200**

**DEFERRAL** **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** **\$13,200**

Screening Date 29-Aug-2011

Docket No. 2011-1531-MWD-E

PCW

Respondent City of Palestine

Policy Revision 2 (September 2002)

Case ID No. 42395

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102183233

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	28	140%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 164%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one order with denial of liability, six NOVs with same/similar violations, two NOVs with dissimilar violations, and 22 months of self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 164%

Screening Date 29-Aug-2011

Docket No. 2011-1531-MWD-E

PCW

Respondent City of Palestine

Policy Revision 2 (September 2002)

Case ID No. 42395

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102183233

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s)

Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010244001, Effluent Limitations and Monitoring Requirements No. 1, 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a)

Violation Description

Failed to comply with permitted effluent limits. See attached Effluent Limit Violation Table.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 2

119 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two quarterly events are recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

x

(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$314

Violation Final Penalty Total \$13,200

This violation Final Assessed Penalty (adjusted for limits) \$13,200

# Economic Benefit Worksheet

**Respondent** City of Palestine  
**Case ID No.** 42395  
**Reg. Ent. Reference No.** RN102183233  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	28-Feb-2011	1-Jun-2012	1.26	\$314	n/a	\$314

Notes for DELAYED costs

Estimated cost to develop and implement procedures to ensure compliance with permit effluent limits.  
Date Required is the first date of non-compliance; final date is the expected compliance date.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

**TOTAL**

\$314

**Effluent Limit Violation Table**

City of Palestine

RN102183233, Case No. 42395, TPDES Permit No. WQ0010244001

2011-1531-MWD-E

Jorge Ibarra, P.E.

Corresponds to Violation Number:

1

**EFFLUENT PARAMETER****Permit Limit**

	NH3N Daily Average Concentration	NH3N Daily Average Loading	NH3N Daily Maximum Concentration		
<b>Month/Year</b>	3 mg/L	118 lbs/day	10 mg/L		
February 2011	c	c	13.3		
March 2011	3.06	c	c		
April 2011	8.86	188.98	16.5		
May 2011	5.71	121.22	16.3		

Name
milligram per liter - mg/L
pounds per day - lbs/day
Ammonia Nitrogen - NH3N
compliant - c





## Compliance History

Customer/Respondent/Owner-Operator:	CN600622922	City of Palestine	Classification: AVERAGE	Rating: 2.94
Regulated Entity:	RN102183233	TOWN CREEK PLANT	Classification: AVERAGE	Site Rating: 2.60
ID Number(s):	WASTEWATER	PERMIT	WQ0010244001	
	WASTEWATER	EPA ID	TX0025453	
	PRETREATMENT	EPA ID	TX0025453000	
	PRETREATMENT	PERMIT	WQ0010244001	
	WASTEWATER LICENSING	LICENSE	WQ0010244001	
Location:	Approximately 2 miles east and 2.7 miles north of the intersection of U.S. Highway 84-79 and Farm-to-Market Road 645 at the confluence of Basset Creek and Town Creek, southwest of the City of Palestine in Anderson County, Texas.			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	August 29, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 29, 2006 to August 29, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Jorge Ibarra, P.E.	Phone:	(817) 588-5890	

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 12/18/2009 ADMINORDER 2009-0659-MWD-E  
 Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 30 TAC Chapter 305, SubChapter F 305.125(5)  
 Rqmt Prov: Operational Req. No. 1 PERMIT  
 Permit Cond. 2.g PERMIT  
 Description: Failed to ensure that the Facility and all of its systems of collection, treatment, and disposal are properly operated and maintained resulting in the unauthorized discharge of wastewater and the accumulation of sludge in the receiving stream.  
 Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Rqmt Prov: ELMR # 1 PERMIT  
 Description: Failed to comply with the permitted effluent limits.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	10/16/2006	(515732)
2	02/15/2007	(578492)
3	03/14/2007	(578494)
4	04/18/2007	(578497)
5	05/17/2007	(578500)
6	06/20/2007	(578503)
7	07/20/2007	(578506)
8	09/21/2006	(578510)
9	10/23/2006	(578512)

10	11/22/2006	(578514)
11	12/20/2006	(578516)
12	01/16/2007	(578518)
13	08/28/2007	(607887)
14	09/18/2007	(607888)
15	12/10/2007	(610215)
16	04/11/2008	(638663)
17	06/05/2008	(680395)
18	07/23/2008	(687165)
19	02/26/2009	(725200)
20	04/21/2009	(736333)
21	06/30/2009	(744335)
22	10/06/2009	(775522)
23	01/11/2010	(786352)
24	02/19/2010	(791376)
25	02/19/2010	(791992)
26	07/08/2010	(799218)
27	02/27/2008	(807220)
28	02/23/2009	(807221)
29	02/18/2010	(807222)
30	03/23/2009	(807223)
31	04/02/2008	(807224)
32	05/23/2008	(807225)
33	04/21/2009	(807226)
34	05/23/2008	(807227)
35	06/01/2009	(807228)
36	06/23/2008	(807229)
37	07/06/2009	(807230)
38	01/26/2009	(807231)
39	09/22/2009	(807232)
40	08/28/2008	(807233)
41	08/26/2009	(807234)
42	09/22/2008	(807235)
43	09/22/2009	(807236)
44	07/21/2007	(807237)
45	10/22/2008	(807238)
46	10/19/2009	(807239)
47	11/08/2007	(807240)
48	11/20/2008	(807241)
49	11/23/2009	(807242)
50	12/21/2007	(807243)
51	12/29/2008	(807244)
52	12/21/2009	(807245)
53	12/18/2007	(807246)
54	12/08/2007	(807247)
55	01/20/2010	(807248)
56	06/14/2010	(826193)
57	03/20/2010	(831798)
58	04/20/2010	(831799)
59	05/19/2010	(831800)
60	06/21/2010	(846556)
61	08/31/2010	(850634)
62	07/20/2010	(861113)
63	08/17/2010	(867179)
64	09/17/2010	(874233)

65	10/18/2010	(881831)
66	11/18/2010	(888317)
67	12/20/2010	(896598)
68	01/26/2011	(902607)
69	02/21/2011	(909395)
70	03/18/2011	(916654)
71	04/19/2011	(925825)
72	05/19/2011	(938351)
73	06/10/2011	(945718)
74	08/25/2011	(948435)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/10/2006 (515732) CN600622922  
 Self Report? NO Classification Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.2  
 Description: Failure to prevent an unauthorized discharge from the cities collection system

Date: 07/31/2007 (607887) CN600622922  
 Self Report? YES Classification Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter

Date: 12/07/2007 (610215) CN600622922  
 Self Report? NO Classification Moderate  
 Citation: 30 TAC Chapter 291, SubChapter F 291.94(a)  
 Description: Failure to properly maintain the collection system as specified in 30 TAC§291.94(a).

Self Report? NO Classification Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 Description: Failure to prevent unauthorized discharges to waters in the state as specified in 26.121(a) of the Texas Water Code.

Date: 04/11/2008 (638663) CN600622922  
 Self Report? NO Classification Moderate  
 Citation: 40 CFR Chapter 403, SubChapter N, PT 403 403.12(i)(2)  
 Description: Failure to submit the required annual report.

Self Report? NO Classification Moderate  
 Citation: 30 TAC Chapter 315, SubChapter A 315.1  
 40 CFR Chapter 403, SubChapter N, PT 403 403.18  
 Description: Failure to develop and enforce technically based local limits.

Self Report? NO Classification Moderate  
 Citation: 30 TAC Chapter 315, SubChapter A 315.1  
 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2)(v)  
 Description: Failure to inspect and sample all SIUs per the approved program.

Self Report? NO Classification Moderate  
 Citation: 30 TAC Chapter 315, SubChapter A 315.1  
 40 CFR Chapter 403, SubChapter N, PT 403 403.12(o)  
 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2)(vi)  
 Description: Failure to maintain adequate records of all sampling, inspections, or enforcement actions taken.

Self Report? NO Classification Moderate  
 Citation: 30 TAC Chapter 315, SubChapter A 315.1  
 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2)(iv)  
 Description: Failure to establish an enforcement management system per 40 CFR 403.8(f)(2)(iv), to track receipt and review of all IU reports and other notices received from IUs.

Self Report? NO Classification Moderate  
 Citation: 30 TAC Chapter 315, SubChapter A 315.1  
 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(5)  
 Description: Failure to implement the CA's enforcement response plan by issuing notices of violation for effluent limit violations and for failure to submit self-monitoring reports, per 40 CFR 403.8(f)(5).

Self Report? NO Classification Moderate  
 Citation: 30 TAC Chapter 315, SubChapter A 315.1  
 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2)(vii)  
 Description: Failure to identify SIUs in significant noncompliance and publish a list of such noncompliant SIUs in accordance with 40 CFR 403.8(f)(2)(vii).

Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 315, SubChapter A 315.1 40 CFR Chapter 403, SubChapter N, PT 403.403.8(f)(3)		
Description:	Failure to have sufficient resources and qualified personnel to implement an approved pretreatment program per 40 CFR 403.8(f)(3).		
Self Report?	NO	Classification	Minor
Citation:	40 CFR Chapter 403, SubChapter N, PT 403.403.12(p)(1)		
Description:	Failure to notify SIUs either by permit or via the City's ordinance of their potential requirement to report hazardous wastes to the EPA, TCEQ, and CA, as required by 40 CFR 403.12(p)(1).		
Date	04/30/2008	(807227)	CN600622922
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	09/30/2008	(807238)	CN600622922
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	02/28/2009	(807223)	CN600622922
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	03/31/2009	(807226)	CN600622922
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	04/30/2009	(807228)	CN600622922
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	05/31/2009	(807230)	CN600622922
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	06/30/2009	(807232)	CN600622922
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	07/01/2009	(744335)	CN600622922
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to maintain compliance with permit limits for TSS and Ammonia.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 317 317.4(a)(8) 30 TAC Chapter 317 317.7(i)		
Description:	Failure to insure that atmospheric vacuum breakers installed on hose bibs and that the RPZ is tested annually.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)		
Description:	Failure to insure that the security fence around the perimeter of the plant is maintained and is in good repair.		
Date	07/31/2009	(807234)	CN600622922
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	08/31/2009	(807236)	CN600622922

Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	09/30/2009 (807239)	CN600622922	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	10/31/2009 (807242)	CN600622922	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	11/30/2009 (807245)	CN600622922	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	12/31/2009 (807248)	CN600622922	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	03/31/2010 (831799)	CN600622922	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	04/30/2010 (831800)	CN600622922	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	05/31/2010 (846556)	CN600622922	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	06/02/2010 (826193)	CN600622922	
Self Report?	NO	Classification:	Moderate
Citation:	TWC Chapter 26 26.121		
Description:	Unauthorized Discharge from Southview LS.		
Date	06/24/2010 (850634)	CN600622922	
Self Report?	NO	Classification:	Minor
Citation:	40 CFR Chapter 403, SubChapter N, PT 403 403.12(g)(1) 40 CFR Chapter 403, SubChapter N, PT 403 403.12(g)(5) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2)(iv) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2)(vii) 40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(5)		
Description:	The Control Authority (CA) failed to (1) determine the certification statement sent by Lone Star Powder Coating on 09/01/2009 was late, (2) determine the self-monitoring reports submitted by Acid & Cementing Service and Palestine Regional Medical Center did not contain flow, (3) determine the sample collected on 04/24/2009 by Acid & Cementing was not preserved according to 40 CFR Part 136, (4) determine that Acid & Cementing met the criteria of SNC during 11/2008 to 04/2009, and (5) enforce.		
Date	06/30/2010 (861113)	CN600622922	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	07/06/2010 (799218)	CN600622922	
Self Report?	NO	Classification:	Minor

Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)	
Description:	Failure to insure that the Chlorine Residual is within Permit limits of 0.01mg/L.	
Date	02/28/2011 (916654)	CN600622922
Self Report?	YES	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	Failure to meet the limit for one or more permit parameter	
Date	03/31/2011 (925825)	CN600622922
Self Report?	YES	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	Failure to meet the limit for one or more permit parameter	
Date	04/07/2011 (906745)	CN600622922
Self Report?	NO	Classification: Moderate
Citation:	TWC Chapter 26 26.121	
Description:	Failure to prevent an Unauthorized Discharge which resulted in untreated wastewater impacting waters of the state.	
Date	04/30/2011 (938351)	CN600622922
Self Report?	YES	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	Failure to meet the limit for one or more permit parameter	
Date	05/31/2011 (945718)	CN600622922
Self Report?	YES	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	Failure to meet the limit for one or more permit parameter	

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF PALESTINE  
RN102183233**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-1531-MWD-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Palestine ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

### **I. FINDINGS OF FACT**

1. The Respondent owns and operates a wastewater treatment plant at approximately two miles east and 2.7 miles north of the intersection of United States Highway 84-79 and Farm-to-Market Road 645 at the confluence of Basset Creek and Town Creek, southwest of the City of Palestine, Anderson County, Texas (the "Facility").

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on August 10, 2011, TCEQ staff documented that the Respondent exceeded its permitted effluent limits as shown in the table below:

<b><i>EFFLUENT PARAMETER</i></b>			
<b>Permit Limit</b>			
	NH <sub>3</sub> N Daily Average Concentration	NH <sub>3</sub> N Daily Average Loading	NH <sub>3</sub> N Daily Maximum Concentration
<b><i>Month/Year</i></b>	3 mg/L	118 lbs/day	10 mg/L
February 2011	c	c	13.3
March 2011	3.06	c	c
April 2011	8.86	188.98	16.5
May 2011	5.71	121.22	16.3

NH<sub>3</sub>N = ammonia nitrogen c = compliant  
lbs/day = pounds per day mg/L = milligrams per liter

4. The Respondent received notice of the violations on August 29, 2011.

## **II. CONCLUSIONS OF LAW**

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with permitted effluent limits, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010244001, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Thirteen Thousand Two Hundred Dollars (\$13,200) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Thirteen Thousand Two Hundred Dollar (\$13,200) administrative penalty.



### III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Thirteen Thousand Two Hundred Dollars (\$13,200) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Palestine, Docket No. 2011-1531-MWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010244001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature

affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

City of Palestine  
DOCKET NO. 2011-1531-MWD-E  
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## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

DeVas for R. Hyde  
For the Executive Director

12-20-11  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Palestine. I am authorized to agree to the attached Agreed Order on behalf of the City of Palestine, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Palestine waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Michael Olt  
Signature

November 1, 2011  
Date

Michael Olt  
Name (Printed or typed)  
Authorized Representative of  
City of Palestine

City Manager  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.